

## **Nanthakumar-Sithamparam (Migration) [2019] AATA 1620 (29 January 2019)**

### **DECISION RECORD**

|                           |                                                                                                            |
|---------------------------|------------------------------------------------------------------------------------------------------------|
| <b>DIVISION:</b>          | Migration & Refugee Division                                                                               |
| <b>REVIEW APPLICANT:</b>  | Mr Charles Anton Nanthakumar-Sithamparam                                                                   |
| <b>VISA APPLICANT:</b>    | Mrs Sangeetha Charles Anton Nanthakumar                                                                    |
| <b>CASE NUMBER:</b>       | 1715607                                                                                                    |
| <b>DIBP REFERENCE(S):</b> | BCC2015/1258645                                                                                            |
| <b>MEMBER:</b>            | Hugh Sanderson                                                                                             |
| <b>DATE:</b>              | 29 January 2019                                                                                            |
| <b>PLACE OF DECISION:</b> | Sydney                                                                                                     |
| <b>DECISION:</b>          | The Tribunal affirms the decision not to grant the visa applicant a Partner (Provisional) (Class UF) visa. |

Statement made on 29 January 2019 at 12:48pm

#### **1. CATCHWORDS**

*MIGRATION – Partner (Provisional) (Class UF) visa – Subclass 309 (Spouse (Provisional)) – no evidence of committed long-term relationship – parties lived together for limited time – review applicant had not visited visa applicant in four years after marriage – lack of communication, companionship and emotional support – inconsistent evidence – evidence manipulated to support visa application – decision under review affirmed*

#### **LEGISLATION**

*Migration Act 1958, ss 5, 65, 359*

*Migration Regulations 1994, r 1.15, Schedule 2, cls 309.211, 309.221, 309.223*

#### **CASES**

*He v MIBP [2017] FCAFC 206*

## STATEMENT OF DECISION AND REASONS

### APPLICATION FOR REVIEW

2. This is an application for review of a decision made by a delegate of the Minister for Immigration on 26 June 2017 to refuse to grant the visa applicant a Partner (Provisional) (Class UF) visa under s.65 of the *Migration Act 1958* (the Act).
3. The visa applicant applied for the visa on 29 April 2015 on the basis of her relationship with her sponsor, the review applicant. At that time, Class UF contained only one subclass: Subclass 309 (Partner (Provisional)). The criteria for the grant of this visa are set out in Part 309 of Schedule 2 to the Migration Regulations 1994 (the Regulations).
4. The delegate refused to grant the visa on the basis that the visa applicant did not satisfy cl.309.211 and cl.309.223 because the delegate was not satisfied that the visa applicant was the spouse, as defined in s.5F of the Act, of the review applicant.

#### *Background*

5. The review applicant was born in Sri Lanka and is currently 53 years old. He is an Australian citizen. He was previously married and divorced his wife in 2006. There are two children of that relationship, Gloria currently 15 years old and Nicolos currently 13 years old. The review applicant's criminal records show that he was convicted of a number of domestic violence offences prior to the end of his marriage to his former wife.
6. The visa applicant is a citizen of Sri Lanka and is currently 40 years old. She has not been in any previous relationship. She has a brother who resides in Australia and four other siblings who live either in India or Sri Lanka. Her mother and stepfather continue to live in Sri Lanka.
7. The parties claim that they first met each other on 10 April 2013. The visa applicant's brother who lives in Australia claimed to have done "checks" on the review applicant. The relationship quickly developed and they were married on 30 April 2013 in Sri Lanka. There is nothing to indicate the marriage between the parties is not valid.
8. The review applicant's movement records show that he returned to Australia on 31 May 2013 and has not travelled out of Australia since then.
9. Various documents were provided in support of the application, including evidence of the review applicant sending money to the visa applicant, photos of the parties' wedding and statements in support of the application by family members. The visa applicant and review applicant were interviewed by an officer from the Department. It was claimed that they did not have a big wedding ceremony in Sri Lanka as the visa applicant is a Methodist and the review applicant is a Catholic. It was claimed that they were introduced through the visa applicant's pastor.
10. The delegate who considered the application noted the following issues:
  - Evidence had been provided that the visa applicant had received money from another source, but there was no information which would indicate this came from the review applicant;
  - The parties lived together for only a very limited time;

- Statements had been provided by friends and relatives in support of the application, however, there was little information which would indicate the social aspects of the relationship indicated the parties were in a genuine relationship;
  - The review applicant had not visited the visa applicant in the four years after their marriage; and
  - There was no evidence the parties were committed to a long-term relationship.
11. Taking these matters into account, the delegate was not satisfied the parties were in a genuine and continuing spousal relationship as defined in s.5F of the Act. The delegate found that the visa applicant did not meet the criteria in cl.309.211 and cl.309.223 and refused the application.

*Information to the Tribunal*

12. The review applicant provided further information to the Tribunal including the following:
- Evidence of money being sent by the review applicant to the visa applicant;
  - Details of a joint bank account with the Commercial Bank of Ceylon;
  - Letter from Women in Need stating the visa applicant had been undergoing counselling because she had not been able to join her husband in Australia;
  - Evidence of correspondence and telephone calls between the parties; and
  - Statements from the review applicant and friends of the review applicant and the visa applicant.
13. In the statement by the review applicant, it was claimed that he had not visited the visa applicant over the last four years because on the income he earned and with the costs of living in Sydney it was not feasible to travel overseas and he had health problems.
14. The review applicant appeared before the Tribunal on 10 January 2019 to give evidence and present arguments. The Tribunal also received oral evidence from the visa applicant. The hearing was conducted with the assistance of an interpreter in the English and Tamil languages. The review applicant was represented in relation to the review by his registered migration agent who attended the hearing.
15. The Tribunal commenced the hearing by explaining to the review applicant the process under s.359AA of the Act. The Tribunal explained to the review applicant it would be putting to him information which would be the reason, or a part of the reason, for affirming the decision under review. It would explain why this information was relevant and then invite the review applicant to comment on or respond to the information. If he required more time, he could request an adjournment.

*Evidence of the review applicant*

16. The review applicant said that he had been living in the home of his mother for the last three years. Prior to this, he had been living with his brother and his family for the previous four or five years. He moved from that home to his mother's home as his brother's children needed their own bedroom.

17. The review applicant said that he was not currently working. The last job he had was for three months in 2015 working as an operator's assistant in a plating company. He said that he got the job through a private agency and it was only to replace somebody on holidays and so the job was only for three months. He said that before this his last work was in 2010 at a smallgoods factory where he injured his back. He said that he was currently receiving a disability pension.
18. The review applicant provided details of his medical condition. He said that he had to receive various injections for his back and cannot lift weights more than 5 kg. He said that apart from exercise and medication he does not do anything else for his back. He said that he also suffers from high cholesterol. He said that he was admitted to hospital in November 2018 as he started imagining things and was having a conversation with his mother, even though his mother was in Sri Lanka at the time. He said that he had not been referred to a psychologist but was told that if it happened again this might be considered.
19. The review applicant said that his mother travels to Sri Lanka for six months every two years. She stays with her daughter who lives there. He said that while in Sri Lanka his mother would visit the visa applicant and the visa applicant will come down to visit his mother.
20. The review applicant provided details as to his children. He said that he last saw them after Christmas at his brother's home. He said that he used to speak to his daughter two or three times per week but there was a problem with phones. He said that he is upset when he does not have any contact with his children. He said that the visa applicant would know when he saw the children and that he speaks to his children. He said that he believed his children know that he is now married to the visa applicant because he thought his brother's wife had told them. He said he has not told his children that he has remarried because in his culture children are not told those things. He could not explain why, if in his culture children are not told these things, his brother's wife would have told his children.
21. The review applicant said that the visa applicant was aware that he had been sentenced to prison for nine months and the reason why he had been imprisoned. He said that the visa applicant had not said anything about the fact that he had been imprisoned for hitting his former wife.
22. The review applicant said that prior to his relationship with the visa applicant he had arranged through friends to have marriage brokers send photos of women he would consider marrying. He said that he spoke to the parents of some of these women but did not agree to marry any of them. He said that it was not planned when he went to Sri Lanka in 2013 to marry the visa applicant and it was just a coincidence that they were introduced and agreed to get married. The review applicant said that he has not returned to Sri Lanka since then because of financial problems.
23. The review applicant said that he believed the visa applicant was doing sewing classes and studying English. He was not sure if she was working. He said that she was living with her parents. He said that he sent her money because as his wife he felt obliged to do so. He said one of the reasons he could not return to Sri Lanka to see his wife is that he has many relatives there and he would have to spend time with them and so it would be expensive. He said that just because they have not seen each other since their marriage does not mean they're not committed to their relationship.
24. The review applicant provided details of his and the visa applicant's religion. He said that if she comes to Australia she will follow his Catholic beliefs and not the Methodist Church. He said they would both like to have two children together, a boy and a girl.

#### *Information of the visa applicant*

25. The visa applicant said that the review applicant was living with his mother. She said that he had been living there since 2013 when they first met each other. She said that she did not know where he had been living prior to then because she did not speak to him about anything that happened before 2013. She said that the review applicant's mother was currently in Sri Lanka.
26. The visa applicant said the review applicant was not currently working. She said he last worked in 2014 for only eight months. He had to stop work because of medical problems. She said the review applicant had back problems. She said he was taking treatment, but was unable to describe what this treatment was. She said that he goes to hospital every month. She did not know why he had gone to hospital in November 2018. She said that he was sick and going to hospital because he was very tired. She said that he hid the reason why he went to hospital from her.
27. The visa applicant said the review applicant's father died in the year 2000. She said that she was not sure when he died, but it was before she married the review applicant. She said that when the review applicant's mother is in Sri Lanka she travels down to visit her in Colombo.
28. The visa applicant said the review applicant had one daughter and one son. She said that she had never asked him when he sees them and she has no idea how much contact he has with them. She said she never speaks to the review applicant about his children.
29. The visa applicant said that she did not know why the review applicant was sentenced to a period in jail. She said that she does not know anything about the review applicant that happened before 2013.
30. The visa applicant said there was a delay in filing Partner visa application because of financial problems and the time they needed to get documents. She said that the review applicant had not travelled to Sri Lanka to spend any time with her because of the cost and medical issues. She claimed that they believed that she would get a visa sooner than it has taken.
31. The visa applicant said that she is working part-time in a preschool and has been doing this for the last four years. She said that she earned about Rs.15,000 per month. She said that before this she was working with an NGO. She said that she currently lives with her parents.
32. The visa applicant said that if she comes to Australia she will follow the church that the review applicant does. She said they plan to have one child together and it would be God's choice as to whether it was a boy or a girl.

#### *Further evidence of the review applicant*

33. The Tribunal referred to the process under s.359AA of the Act set out above. The Tribunal referred to the information given by the visa applicant which was inconsistent to the information given by the review applicant. This was relevant as it indicated the parties did not have the level of communication with each other that would be expected in a genuine and continuing relationship and that they did not provide the degree of companionship and emotional support to each other which would be expected in a genuine and continuing relationship.
34. The Tribunal referred to the fact that the visa applicant believed the review applicant had been living with his mother since 2013 whereas the evidence of the review applicant was that he had only been living with her for the last three years and before that had been living

with his brother. The review applicant claimed that his brother was old and he goes back and forth between his brother's home and his mother's home and that's why the confusion may have been caused.

35. The Tribunal referred to the fact that the visa applicant believed the review applicant's last job lasted for eight months and he had to stop due to medical issues whereas the review applicant said that his job lasted for three months and it ceased because the job was only for a three month period, and the person whose job it was returned. The review applicant claimed the visa applicant had got excited because she was not used to being interviewed over the telephone and forgot what had happened.
36. The Tribunal referred to the fact that the visa applicant said that she did not know anything about the husband prior to 2013. This indicated the parties had not discussed important issues in their lives together. The review applicant said that he only saw the visa applicant for six or seven days prior to their wedding and there was not time to provide all this information. The Tribunal noted, however, that it had been claimed the parties were in regular telephone and internet communication and the fact that the visa applicant was not aware of anything before 2013 indicated they had not discussed important issues together.
37. The Tribunal noted the evidence of the visa applicant was that she did not know the reason why the review applicant was jailed for nine months whereas the review applicant said that he had discussed this with the visa applicant. The review applicant said he had no comment about this.
38. The Tribunal noted the evidence of the visa applicant which was that she was working part-time and had done so for the last four years. Prior to this she was working for an NGO. This was inconsistent with the information provided by the review applicant which was that he was not aware of whether the visa applicant was working. The review applicant said that he did not have any comment about this.
39. The Tribunal noted the evidence of the visa applicant which was that she and the review applicant plan to have one child together. This was inconsistent with the information provided by the review applicant which was that the parties plan to have two children together. The review applicant said that they talked about having two children together so he did not know why she had changed her mind.
40. The Tribunal wrote to the review applicant on 11 January 2019 pursuant to s.359A of the Act with information provided by the visa applicant which was inconsistent with information given by the review applicant. The review applicant responded by providing a statutory declaration dated 14 January 2019 responding to the issues raised by the Tribunal. In that response, the applicant responded as follows:
  - The visa applicant did not know the review applicant was living with his brother prior to 2015 because he had not mentioned it to her, as he also lived with his mother and did not see the need to tell her;
  - The visa applicant was confused when the Tribunal asked the visa applicant about the review applicant's work and why he ceased working;
  - The review applicant did not share with the visa applicant the information that he suffered from hallucinations and was admitted to hospital in November 2018 because he feared that she would get worried and upset. He claimed that in Sri Lanka people who suffer from hallucinations would be considered mentally ill and he was concerned this was how the visa applicant and her family may perceive him. He was

also concerned her health may deteriorate if she realised she would be dependent upon a person for emotional support who was mentally ill;

- When the review applicant spoke to the visa applicant about his children when they got married she told him that she did not want to know about his children and so the review applicant did not share information about his children with his wife;
- The review applicant believed that he had told the visa applicant the reason why he went to jail but now believes that he did not do so;
- The visa applicant had never told the review applicant that she was working and earning an income in Sri Lanka and, after the hearing, the visa applicant told him she did not do so because she was concerned that he would then not send her money if he knew she was working and earning an income; and
- Although the parties had spoken about having children in the future, they had differences of opinion and as a Christian the visa applicant would consider it to be God's grace as to any sex of a child.

41. For the following reasons, the Tribunal has concluded that the decision under review should be affirmed.

#### **CONSIDERATION OF CLAIMS AND EVIDENCE**

42. The issue in the present case is whether the visa applicant is the spouse, as defined in s.5F of the Act, of the review applicant.

#### **Whether the parties are in a spouse or de facto relationship**

43. Clauses 309.211(2) and 309.221 require that at the time the visa application was made, and at the time of this decision, the visa applicant is the spouse or de facto partner of an Australian citizen or Australian permanent resident or an eligible New Zealand citizen. In the present case the visa applicant claims to be the spouse of the review applicant who is an Australian citizen.
44. 'Spouse' is defined in s.5F of the Act and provides that a person is the spouse of another where the two persons are in a married relationship. Persons in a married relationship must be married to each other under a marriage that is valid for the purposes of the Act, there must be a mutual commitment to a shared life as a married couple to the exclusion of all others, the relationship must be genuine and continuing, and the couple must live together, or not live separately and apart on a permanent basis: s.5F(2)(a)-(d). In forming an opinion about these matters, regard must be had to all of the circumstances of the relationship. This includes evidence of the financial and social aspects and the nature of the visa applicant's and review applicant's household and their commitment to each other as set out in r.1.15A(3) of the Regulations, which is extracted in the attachment to this decision. Each of the specific matters contained in r.1.15A(3) are effectively questions which must be answered: *He v MIBP* [2017] FCAFC 206.

#### **Are the parties validly married?**

45. If the parties are validly married, they may meet the requirements of a married relationship, but not a de facto relationship. The parties were married in Sri Lanka on 30 April 2013. On the evidence, the parties were married to each other under a marriage that is valid for the purposes of the Act as required by s.5F(2)(a).

## **Are the other requirements for a spouse relationship met?**

### *Financial aspects*

46. The review applicant lives in Australia and the visa applicant lives in Sri Lanka. It is not surprising, therefore, that the parties do not have any joint assets or liabilities or are pooling their financial resources.
47. The visa applicant opened a bank account in the names of herself and the review applicant. As the review applicant has not returned to Sri Lanka after he married the visa applicant there does not seem to be any plausible reason for the opening of this account in the joint names of the parties. The review applicant has sent money to the visa applicant, which is discussed below, but this money has not been deposited directly into the account and the only use of the account has been by the visa applicant alone. The Tribunal finds that the opening of the account has been done by the parties to manipulate the evidence to support the claims the parties are in a genuine relationship and is not a true reflection of the financial aspects of their relationship.
48. The review applicant provided evidence of his sending money to Sri Lanka. There is no plausible reason why the review applicant would be sending money to the visa applicant. It was claimed that he sent this money to her because he felt an obligation to do so as her husband. There is no information which would indicate the visa applicant required the money or had requested the review applicant provide her financial support for any reason. The visa applicant is working in Sri Lanka and there is nothing to indicate that her own income does not meet her necessary day-to-day expenses. As the review applicant owns little or no assets and is dependent upon a pension, the Tribunal finds that his sending money to the visa applicant is not a practical or necessary thing to do and has only be done to support the visa application and not for any valid reason.
49. The review applicant did not know the visa applicant was working or any details of her income or financial circumstances. He claimed that the visa applicant had not told him anything about this because "she was concerned that (he) would not send her money if (he) knew she was working and earning an income". The fact that the review applicant was unaware of the work and income of the visa applicant, and that she failed to disclose this information to him, indicates the parties have not discussed their financial affairs or are aware of important financial information about each other.
50. Overall, the Tribunal finds that the financial aspects of the relationship do not support a finding that the parties are in a genuine and continuing relationship. The Tribunal finds the parties have manipulated evidence to support the visa application and are not a true reflection of any relationship between the parties.

### *Household*

51. There is little information of the parties having ever established a household. As the visa applicant lives in Sri Lanka and the review applicant lives in Australia, this is not surprising. The only time the parties have been together was for the period immediately after their marriage in 2013. The review applicant has not returned to Sri Lanka since he returned to Australia on 31 May 2013. Accordingly, the parties have never shared a household where the living arrangements and any sharing of the housework would be indicative of the parties living in a genuine and continuing relationship or having a mutual commitment to a shared life as husband and wife.
52. The Tribunal finds that there is no evidence of the nature of any household the parties have established which would support a finding that the parties are in a genuine and continuing



relationship or have a mutual commitment to a shared life as husband and wife to the exclusion of all others. The Tribunal, however, places little weight on this aspect of their relationship as they have not been in the same country since 2013.

#### *Social aspects*

53. There is limited information of any social aspects of the relationship. The parties were married in Sri Lanka on 30 April 2013. The review applicant returned to Australia on 31 May 2013. The parties have not been in each other's company since then. Photos were provided of the parties on their wedding day with a total of eight people present. There is no other evidence of the parties being together or participating in any other social activity apart from the wedding ceremony.
54. Statements have been provided from friends and relatives claiming that the parties represent themselves as being married to each other. Evidence has been provided of the visa applicant spending time with the review applicant's mother who spends an extended period of time living in Sri Lanka.
55. The review applicant has not returned to Sri Lanka since he returned to Australia on 31 May 2013 after his marriage to the visa applicant. There is no information which would indicate that, apart from the marriage, the parties have in the past or plan in the future to undertake any joint social activities together or any public activities which would be representative of them being in a married relationship. The fact that the review applicant has not returned to Sri Lanka since May 2013 is discussed below.
56. The review applicant has two children from a former marriage, with whom he has limited contact. He claimed that he had not told his children of the fact that he had remarried. He believed that the children did know that he had remarried because he believed that his sister-in-law had told them. He explained that he had not told his children, who are currently aged 15 and 13 years old, because this was not done in his culture. The Tribunal does not accept that if the review applicant was representing himself as being in a married relationship with the visa applicant that he would not have told his children about this fact. The Tribunal does not accept the review applicant's claim that it would not be culturally appropriate for him to tell his children. If his sister-in-law, who is Sri Lankan, felt it was appropriate for her to tell the review applicant's children that he had remarried, there is no plausible explanation why the review applicant would not have told them about it if the relationship is genuine and continuing.
57. The fact that the review applicant has not told his children anything about his claimed relationship with the visa applicant calls into question whether parties represent themselves as being married to each other.
58. The Tribunal takes into account statements by friends and relatives of the parties claiming they considered their relationship to be genuine. Against this, however, is the fact that the visa applicant and review applicant have not spent any time together since the review applicant returned to Australia in May 2013. The fact that the children of the review applicant have not been told by their father that he has remarried must also be given significant weight when considering whether the social aspects of the relationship supported a finding the parties are in a genuine and continuing relationship or have a mutual commitment to a shared life as husband and wife to the exclusion of all others.

#### *Commitment to each other*

59. In the application, it was claimed that the parties first met each other on 10 April 2013 and were married on 30 April 2013, 20 days after they first met. They have now been married for

almost six years. The visa application was only filed two years after they were married. The review applicant has not returned to Sri Lanka since he left there in May 2013.

60. The parties provided evidence of their communication with each other, which included telephone records and screenshots of them using Skype or other internet communication methods. Despite claiming to be in regular communication with each other, the parties did not display the level of knowledge of each other's lives which would be expected if they are in a genuine and continuing relationship. The fact that the parties did not know significant aspects of each other's lives indicated that they did not communicate with each other to the level claimed and that they did not provide the degree of companionship and emotional support which would be expected in a genuine and continuing relationship.
61. The visa applicant said that she was not aware of any aspects of the review applicant's life before 2013 when they were married. She said that she was aware that the review applicant had been in jail, but was not aware of the reason why. The Tribunal does not accept that if the parties were in a genuine and continuing relationship the parties would not have discussed this area of the review applicant's life, particularly as it involved claims of violence against the review applicant's former wife. Further, the visa applicant claimed that he had spoken to the visa applicant about this issue, although later claimed that he must not have done so.
62. The visa applicant was not aware of issues in the review applicant's relationship with his children. It was claimed that the visa applicant said that she told the review applicant that she did not want to know about his children. As the review applicant is in a continuing relationship with his children the Tribunal does not accept that if the parties provided the degree of companionship and emotional support which would be expected in a genuine and continuing relationship that the visa applicant would not have a concern about the review applicant's children and their relationship with him. If the visa applicant did tell the review applicant that she did not want to know anything about his children and then the review applicant agreed not to share any such information, this again indicates the parties do not provide the degree of companionship and emotional support which would be expected in a genuine relationship.
63. Throughout most of the relationship, the review applicant has not worked and has been in receipt of a pension. For a short period of three months he was working, but ceased that employment because the person he was replacing returned to the job. In contrast to this, the visa applicant believed that he was in the job for about eight months and had to stop due to his medical problems. As this was the only period in which the review applicant was working over the course of their relationship, it would be expected that the visa applicant would have been aware of how long the review applicant was working and the reasons why he was not able to continue in that position. The Tribunal does not accept that it was just a period of confusion on the part of the visa applicant which led her to provide this incorrect information as to the review applicant's work during the course of their claimed relationship.
64. The same is true in relation to the visa applicant's employment. The review applicant was not aware the visa applicant was working and earning an income. The review applicant explained this by claiming that the visa applicant did not disclose this information to him. This indicates that the parties are not communicating about their day-to-day activities or important aspects of each other's lives. This indicates a lack of communication, companionship and emotional support which would be expected in a genuine and continuing relationship.
65. The visa applicant believed that throughout their relationship the review applicant had been living with his mother. This information was inconsistent to that given by the review applicant which was that he had been living with his brother until 2015 when he then moved to live with his mother. He only moved out of his brother's home because his brother's children

needed their own bedroom. Although the review applicant explained this inconsistency by claiming that he did not mention to the visa applicant that he was living with his brother prior to 2015, the Tribunal does not accept that if the parties claim to have been in a relationship since April 2013 that the visa applicant would not be aware of where the review applicant was living if their relationship is genuine and continuing.

66. The review applicant suffered a medical episode in November 2018 when he was suffering from hallucinations and was admitted to hospital. He did not tell the visa applicant about this. He claimed that he did not tell the visa applicant because he was worried she would get upset, in part because in Sri Lanka it is believed that if somebody suffers from episodes of hallucinations they would be considered mentally ill and the visa applicant and her family may then perceived him as having a mental illness.
67. The Tribunal does not accept that if the parties are in a genuine and continuing relationship and if they provide the degree of companionship and emotional support which would be expected in such a relationship, that the review applicant would not have told the visa applicant of his admission to hospital in November 2018 and the reasons for this. If the parties were in a genuine relationship, it would be expected that the visa applicant would provide the review applicant emotional support in light of this episode. That the review applicant was concerned that the visa applicant may simply consider that he has a mental illness indicates that the visa applicant does not provide that companionship and emotional support to the review applicant which would be expected in a genuine relationship.
68. As indicated above, the review applicant has not returned to Sri Lanka since May 2013. The explanation given by the review applicant for his failure to spend any time with the visa applicant over the period they had been married was that he did not have the financial capacity to travel to Sri Lanka. In part, this was because he had relatives in Sri Lanka and he would have to visit them and this would also cost him money.
69. The Tribunal does not accept that if the parties were in a genuine and continuing relationship that the review applicant would not have made some arrangements to have visited the visa applicant over the almost six years of the claimed relationship. The review applicant has not been in paid employment and therefore did not have any employment obligations which would have prevented him from travelling. The review applicant has been sending money to the visa applicant as outlined above. As indicated, there seems to have been no plausible reason for the review applicant sending money to the visa applicant when she was employed and did not have any need for the money. If the parties were in a genuine relationship it would be expected that the review applicant would have used this money to be able to travel to Sri Lanka and spend time with the visa applicant rather than just sending money to the visa applicant because he thinks he is required to do so. The review applicant's mother spends an extended time in Sri Lanka every second year. If the review applicant's mother is able to travel to Sri Lanka and spend an extended time there, there does not seem to be any reason why the review applicant would not have been able to manage to travel to Sri Lanka on some occasions to be able to spend some time with the visa applicant if they were in a genuine relationship.
70. The parties provided inconsistent information as to any plans they have to have children together. Although the review applicant claimed this was not a significant inconsistency, if the parties did genuinely consider their relationship as long-term, and particularly in light of the age of the parties, it would be expected that each party would know what the other wanted as far as having children together. That inconsistent information was provided indicated they have not talked about this significant issue in their lives and that they do not see their relationship as long-term.

71. Overall, the Tribunal finds that the parties have not displayed the degree of companionship and emotional support which would be expected in a genuine and continuing relationship. They have shown a lack of commitment to each other and to the claimed relationship. They do not know significant aspects of each other's lives and do not appear to have discussed important aspects of their future together which they would have if they genuinely intended to live together and have a mutual commitment to a shared life as husband and wife to the exclusion of all others.

*Overall assessment*

72. The Tribunal has considered all the information before it both individually and cumulatively. There are significant aspects of the claimed relationship which do not support a finding that the parties are in a genuine and continuing relationship or that they have a mutual commitment to a shared life as husband and wife to the exclusion of all others. As indicated above, the parties are unaware of significant issues in each other's lives which indicate a lack of commitment to each other and the claimed relationship. There is little information as to the social aspects of the relationship, in large part because the review applicant has, for whatever reason, decided not to travel to Sri Lanka to spend any time with the visa applicant since May 2013. The review applicant has not discussed with his children the fact that he has married the visa applicant.
73. For the above reasons the Tribunal is not satisfied that the parties have a mutual commitment to a shared life as husband and wife to the exclusion of all others. The Tribunal is not satisfied that the relationship between the review applicant and the visa applicant is genuine and continuing. The parties do not live together and the Tribunal is not satisfied that the parties will live together in the future.
74. On the basis of the above the Tribunal is not satisfied that the requirements of s.5F(2) are met at the time the visa application was made and at the time of this decision. Therefore the visa applicant does not meet cl.309.211 and cl.309.221.
75. For the reasons above, the visa applicant does not satisfy the criteria for the grant of the visa.

**DECISION**

76. The Tribunal affirms the decision not to grant the visa applicant a Partner (Provisional) (Class UF) visa.

Hugh Sanderson  
Member

## **ATTACHMENT - Extract from Migration Regulations 1994**

### **1.15A Spouse**

- (1) For subsection 5F (3) of the Act, this regulation sets out arrangements for the purpose of determining whether 1 or more of the conditions in paragraphs 5F (2) (a), (b), (c) and (d) of the Act exist.
- (2) If the Minister is considering an application for:
  - (a) a Partner (Migrant) (Class BC) visa; or
  - (b) a Partner (Provisional) (Class UF) visa; or
  - (c) a Partner (Residence) (Class BS) visa; or
  - (d) a Partner (Temporary) (Class UK) visa;the Minister must consider all of the circumstances of the relationship, including the matters set out in subregulation (3).
- (3) The matters for subregulation (2) are:
  - (a) the financial aspects of the relationship, including:
    - (i) any joint ownership of real estate or other major assets; and
    - (ii) any joint liabilities; and
    - (iii) the extent of any pooling of financial resources, especially in relation to major financial commitments; and
    - (iv) whether one person in the relationship owes any legal obligation in respect of the other; and
    - (v) the basis of any sharing of day-to-day household expenses; and
  - (b) the nature of the household, including:
    - (i) any joint responsibility for the care and support of children; and
    - (ii) the living arrangements of the persons; and
    - (iii) any sharing of the responsibility for housework; and
  - (c) the social aspects of the relationship, including:
    - (i) whether the persons represent themselves to other people as being married to each other; and
    - (ii) the opinion of the persons' friends and acquaintances about the nature of the relationship; and
    - (iii) any basis on which the persons plan and undertake joint social activities; and
  - (d) the nature of the persons' commitment to each other, including:
    - (i) the duration of the relationship; and
    - (ii) the length of time during which the persons have lived together; and
    - (iii) the degree of companionship and emotional support that the persons draw from each other; and
    - (iv) whether the persons see the relationship as a long-term one.
- (4) If the Minister is considering an application for a visa of a class other than a class mentioned in subregulation (2), the Minister may consider any of the circumstances mentioned in subregulation (3).